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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re I.M., a Person Coming Under the Juvenile
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

I.M.,

Defendant and Appellant.

F057897

(Super. Ct. No. 09CEJ600279-1)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. John F. Vogt,
Judge.

Arthur L. Bowie, under appointment by the Court of Appeal, for Defendant and
Appellant.

Edmund G. Brown, Jr., Attorney General, Michael P. Farrell, Assistant Attorney
General, Catherine Chatman and Raymond L. Brosterhous II, Deputy Attorneys General,
for Plaintiff and Respondent.

* Before Cornell, Acting P.J., Dawson, J. and Hill, J.

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Following a contested jurisdiction hearing, the juvenile court found true allegations that appellant I.M., a minor, committed two counts of second degree robbery (Pen. Code, §§ 211, 212.5, subd. (c)).¹ Following the subsequent disposition hearing, the court adjudged appellant a ward of the court and ordered him committed to the Department of Corrections and Rehabilitation, Juvenile Justice.

On appeal, appellant's sole contention is that the evidence was insufficient to support the instant adjudications. We will affirm.

FACTS

Jonathan Mitchell testified to the following. On February 28, 2009,² he was working as a cashier at a Fresno convenience store (the store) when, at approximately 10:30 p.m., "four men ... [came] in" and said, " 'Give us some money.' " One of the robbers pointed a gun at Mitchell. Mitchell took money from the cash register and gave it to the man with the gun. At that point, the men left the store. Mitchell was "focused" on the man with the gun, and all four intruders were "covered up." For a "brief second," Mitchell saw the eyes and nose of one of the men, but could see nothing of the faces of the others.

Adasha Paulos testified to the following. At 10:00 p.m. on February 28, she got off work at the store, where she worked as a cashier, and went home. However, upon realizing she had left her dinner at the store, she drove back, arriving at the store at approximately 10:10 p.m. She parked in the store parking lot, went inside, retrieved her dinner and got back in her car, at which point she saw "four guys ... walking towards the store." Three "were wearing black" and the fourth "had like a white sheet over [his]

¹ All further statutory references are to the Penal Code.

² All references to dates of events are to dates in 2009.

head.” She saw these persons for more than 10 seconds, but she was “not sure” if her view lasted 15 seconds. She was more than 37 feet away from them.

She was “[n]ot really” able to see their faces. However, the one with the white sheet “didn’t have it fully ... covering [his] face,” and she was able to see that person’s nose and eyes. At the time she saw him, she thought she had seen him in the store previously. When asked at the hearing if she saw that person in the courtroom, she answered, “Not that I could positively identify.”

After the four subjects entered the store, Paulos “drove out [of] the parking lot” but “then [she] came back,” at which point “the police were already there” and the four subjects “were running across the street.” She could not see any of their faces.

Paulos had seen appellant come in the store “probably ... twice” on February 28. Asked if appellant came into the store “often,” Paulos answered, “I guess so.”

Fresno Police Officer Dalain Medina testified that on February 28, while responding to a report of a robbery at the store, he was approached by Adasha Paulos who told the officer the following. She saw four “guys” leave the area; they were Black males, “possibly 18 to 20 years old”; one of them “had tied a white T-shirt around his head”; she was able to see his face from “just below his eyebrows to just below his nose”; and she recognized that person, based on eyes, nose and skin color, as a person who “[came] into the store on a regular basis.”

Paulos testified that she spoke with more than one police officer, but at the time of her conversation with the first officer with whom she spoke “the incident [was] clear in [her] mind” and she was “certain [at that time she] recognized the individual with the white sheet.”

Stephanie Johnson testified to the following. She is the manager of the store. Prior to the robbery, she knew appellant as a customer who “comes in the store frequently,” and she had been “trying to help him get a job at parks and recreation over the summer” “[W]hen the incident occurred,” Paulos telephoned Johnson at home and

told her that “ ‘[t]he one who came in that you were going to help get the summer job’ ” was one of the persons who “came in and robbed the store.”

Fresno Police Detective Leo Martinez testified to the following. He spoke to Adasha Paulos at the store on February 28, at which time Paulos stated she had seen “four subjects walking ... towards the store” and “she recognized one of them as a frequent customer of [the store].”

On March 2, Detective Martinez “conduct[ed] a photo lineup with [Paulos].” Paulos identified a photograph of appellant as that of one of the persons she had seen entering and subsequently leaving the store at the time of the robbery. She recognized the person as a “prior customer.” She stated “he had his face fully exposed and right before he entered the store there was a white sheet or something around his face.”

On direct examination, Detective Martinez testified his “particular procedure” when conducting a photographic lineup is to read verbatim from a form the following admonition: “In a moment I’m going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. Keep in mind that hairstyle, beards and/or mustaches may be easily changed. Also, photographs may not always depict the true complexion of a person. The person’s complexion may be lighter or darker than shown in the photographs. Pay no attention to any markings or numbers that may appear on the photographs and/or any other differences, including the type and style of the photographs which are being shown. When you have looked at all the photographs tell me whether or not you see the person who committed the crime now being investigated. Do not tell any other witnesses that you have or have not indentified anyone.” He “g[a]ve” this admonition to Paulos.

Paulos signed a document, which was admitted into evidence, that contained a printed and substantively identical version of the admonition set forth above. In her own hand, Paulos wrote at the bottom of the document the following: “This is the person I

saw enter the store with a white sheet on his head. I also saw his face before he robbed the store.” Detective Martinez testified that immediately before she wrote this, he “told her to write down a couple of sentence[s] why she picked [the photograph of appellant], and that’s what she wrote.”

On cross-examination, Detective Martinez testified he wrote in his report that he had Paulos read and sign the admonition. He testified: “[S]ometimes I read it, sometimes I have [the witness read it]. If I put down that she read it, then she probably read it.” He did not remember “making any statements” to Paulos before she viewed the photographs. In his report he wrote, “ ‘I placed the lineup faced down and asked her to flip over the lineup and tell me what she thought.’ ” Asked if that was “accurate,” the detective testified: “If that’s what I wrote down, but I don’t recall if that’s exactly what I said, if that makes sense, I mean” He further testified, “I don’t recall exactly what I told her during that time.”

Detective Martinez also testified on cross-examination as follows. Paulos pointed to appellant’s picture and said, “That’s him.” “[I]t was clear” that “[s]he was talking about the person who robbed the store” and not just “someone she recognized as having seen before.”

Paulos further testified to the following. At the lineup, the detective “told [her] to pick out someone that [she] recognized.” She did not believe that the person whose photograph she recognized was involved in the robbery. She recognized that person “from somewhere else,” “from the store.” The detective “didn’t make it clear” that he was asking her to identify one of the persons involved in the robbery. Asked if the person she identified in the lineup was “someone involved in the robbery,” Paulos answered, “Not that I could identify.”

A “surveillance video associated with the robbery of [the store]” (store surveillance video) was played in court and admitted into evidence. Appellant testified that he was not one of the four suspects shown in the video, and that he was at the home

of his cousin from approximately 9:00 p.m. on February 28 until March 2. Appellant's cousin testified that appellant arrived at his house some time on February 28 and stayed until March 2.

After the close of evidence, the court stated it had viewed the store surveillance video, and that it showed the following: "... 4 young men" entered the store. One of them, "[a] person with [a] white hood ... or white cover over the head," was "acting as a lookout, going down the various [aisles] facing the front door at all times" "[T]here are two separate counts [of second degree robbery] given the presence of two separate victims behind the counter"³

DISCUSSION

Appellant contends the evidence was insufficient to support his two adjudications of second degree robbery. As we explain below, we disagree.

Governing Principles

Robbery is defined as "the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.)

"[P]arties to crimes" include "Principals" (§ 30.) Section 31 defines principals as "[a]ll persons concerned in the commission of a crime ... whether they directly commit the act constituting the offense, or aid and abet in its commission" An aider and abettor is one who acts "with knowledge of the criminal purpose of the perpetrator *and* with an intent or purpose either of committing, or of encouraging or facilitating commission of" an offense. (*People v. Beeman* (1984) 35 Cal.3d 547, 560.)

³ We have viewed the store surveillance video. There is no dispute, and we conclude, that the juvenile court's description of the matters depicted in the video is accurate.

In determining whether the evidence is sufficient to support a juvenile court finding that a minor has committed a criminal offense, the reviewing court is bound by the same principles as to sufficiency and the substantiality of the evidence which govern the review of criminal convictions generally. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) Those principles include the following:

“To assess the evidence’s sufficiency, we review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime or special circumstances beyond a reasonable doubt. [Citation.] The record must disclose substantial evidence to support the verdict—i.e., evidence that is reasonable, credible, and of solid value—such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citation.] In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the jury could reasonably have deduced from the evidence. [Citation.] ‘Conflicts and even testimony [that] is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]’ [Citation.] A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support”’ the jury’s verdict. [Citation.]” (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) An appellate court “do[es] not reweigh the evidence” (*People v. Stewart* (2000) 77 Cal.App.4th 785, 790.)

“By definition, ‘substantial evidence’ requires *evidence* and not mere speculation.” (*People v. Cluff* (2001) 87 Cal.App.4th 991, 1002, quoting *People v. Morris* (1988) 46 Cal.3d 1, 21.) “ ‘[W]hile substantial evidence may consist of inferences, such inferences must be “a product of logic and reason” and “must rest on the evidence” [citation]; inferences that are the result of mere speculation or conjecture cannot support a finding

[citations].’ ” (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1393-1394, italics omitted.) “Evidence which merely raises a strong suspicion of the defendant’s guilt is not sufficient to support a conviction.” (*People v. Redmond* (1969) 71 Cal.2d 745, 755.)

Finally, we review “ ‘the entire picture of the defendant put before the [trier of fact]—and [we] may not limit our appraisal to isolated bits of evidence selected by the respondent.’ ” (*People v. Johnson* (1980) 26 Cal.3d 557, 577.) “ ‘[I]t is not enough for the respondent simply to point to “some” evidence supporting the finding, for “Not every surface conflict of evidence remains substantial in the light of other facts.” ’ [Citation.]” (*Ibid.*)

Analysis

There is no dispute the evidence was sufficient to establish that on February 28, a male subject, his face partially covered by a white sheet or T-shirt, aided and abetted in the commission of two counts of second degree robbery at the store. Appellant’s contention on appeal is that the evidence was not sufficient to establish that *he* was that person. We disagree.

As indicated above, the evidence adduced at the jurisdiction hearing included the following. Paulos testified that she was able to see the nose and eyes of the male subject who had a white sheet partially covering his face, and that at the time of the event she thought she had seen him in the store before; Officer Medina testified that when he spoke to Paulos on the night of the robbery, she told him that she recognized the male subject with the “white T-shirt” around his head as a person who came in the store on a regular basis; Paulos testified she told the first police officer with whom she spoke concerning the robbery that she was “certain” she recognized the person with the “white sheet”; Stephanie Johnson, the manager of the store, testified that she had attempted to help appellant get a summer job, and that Paulos called her around the time of the robbery and told her that one of the robbers was “ ‘[t]he one [Johnson was] going to help get [a] summer job’ ”; Detective Martinez testified Paulos identified a photograph of appellant

as being that of one of the robbers; Paulos signed an acknowledgment that she had been advised before identifying the photograph that she was being asked if she could identify “the person who committed the crime(s) now being investigated”; and Paulos wrote, in her own hand, a statement that the photograph she picked was that of the person who “enter[ed] the store with a white sheet on his head.”

It is a reasonable inference from the evidence summarized above that (1) on the night of the robbery Paulos recognized appellant, and (2) a few days later she positively identified him at a photo lineup as one of the persons who entered and exited the store at the time of the robbery. And from these inferences, considered in conjunction with Jonathan Miller’s testimony and the video evidence, it is reasonably inferable that appellant, by acting as a lookout, aided and abetted in two counts of robbery. Therefore, under the principles summarized above, substantial evidence supports both of appellant’s adjudications of second degree robbery.

Appellant argues reversal is required because other evidence contradicts or otherwise casts doubt on much of the evidence pointing to appellant’s guilt. Specifically, he refers to Paulos’s inability to identify appellant at the jurisdiction hearing; her testimony that in picking appellant’s photograph out of the lineup she thought she was indicating only that it depicted a person she recognized, not one of persons she had seen entering and exiting the store; Detective Martinez’s inability to recall what he told Paulos at the time of the photo lineup; and the alibi evidence offered by appellant and his cousin. In addition, appellant challenges the probative value of Paulos’s statements to police and the store manager, made near the time of the robbery, implicating appellant in the robbery, on the basis that, “Eyewitness identification is extremely unreliable when it’s the only evidence presented in a case.”

These factors, however, establish only that there were conflicts in the evidence. Appellant asks this court, in effect, to reweigh the evidence and resolve the conflicts in his favor. However, as demonstrated above, under well established principles of

appellate review, we may not do so. As demonstrated above, substantial evidence supports the instant adjudications. Therefore, reversal is not warranted.

DISPOSITION

The judgment is affirmed.